

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2003-0037
)	for
Fieldstone Homes)	Administrative Civil Liability
14 Corporate Plaza)	
Newport Beach, CA 92660)	
)	
<u>Attn: Steve Bradley</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Fieldstone Homes (Fieldstone) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on April 4, 2003, at Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga. Fieldstone or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Fieldstone is alleged to have violated Provisions A.2 and C.2 (See Item 8, below) of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Fieldstone failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged storm water and non-storm water containing pollutants to waters of the United States from its construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
5. According to the Notice of Intent (NOI) filed on February 28, 2002, Fieldstone is the owner of the construction site located at the southwest corner of Butterfield Ranch Road and Slate Drive in Chino Hills. Runoff from the Fieldstone construction is regulated under the State's General Permit, WDID No. 8 36S317566.
6. This complaint is based on the following facts:
 - a) On August 15, 2002, Board staff conducted a routine inspection of the construction site. The pollutant control measures (best management practices, BMPs) at the site were inadequate, not properly maintained and had significantly

- deteriorated despite recently documented visual inspection by facility personnel. There was evidence that concrete wash-out water had overflowed its containment structure and discharged into a catch basin. The filter fabric at the catch basin inlets was torn and was ineffective in controlling sediments, trash, debris and other pollutants from entering the storm drain system.
- b) On September 6, 2002, a Notice of Violation (NOV) was issued to Fieldstone. The NOV outlined the aforementioned problems and required Fieldstone to implement effective BMPs.
 - c) On September 18, 2002, Fieldstone responded to this NOV and indicated that appropriate BMPs were implemented at the site. At the request of Mr. Bob Sciotto, Offsite Construction Manager, Board staff met with him and discussed the NOV and reviewed the control measures needed for the site.
 - d) On November 8, 2002, Board staff conducted an inspection during a storm event and noted that the BMPs implemented at the site were not maintained and the filter fabric on a catch basin inlet was not installed properly resulting in the discharge of sediment-laden storm water.
 - e) On November 14, 2002, Board staff re-inspected the site and found a significant amount of debris littered throughout the site. Staff spoke to Mr. Bob Sciotto by phone and requested him to improve the housekeeping practices and other BMPs at the site.
 - f) On November 27, 2002, Board staff re-inspected the site and found evidence of sediment discharges to the catch basin and no significant improvement to housekeeping practices or other BMPs at the site since the November 8, 2002 storm event.
 - g) On December 12, 2002, a second NOV was sent to Fieldstone outlining the aforementioned violations observed during the November inspections. Fieldstone was requested to immediately address the problems at the site and to submit a copy of the training records and inspection reports and to describe the actions taken to address the identified problems by December 23, 2002.
 - h) On December 16, 2002, Board staff conducted a site inspection during a storm event. The northeast portion of the site was flooded and there was a significant amount of foamy water adjacent to the concrete wash-out area.
 - i) On December 17, 2002, Mr. Steve Bradley informed Board staff that he had replaced Mr. Bob Sciotto as the Offsite Construction Manager and he also indicated that he would respond to the NOV. However, Mr. Bradley failed to provide the requested information by the stipulated date.
 - j) On January 6, 2002, Board staff spoke by phone with Mr. Bradley regarding Fieldstone's lack of response to the NOV and the need to respond to it. A response was received on January 23, 2003.

8. Fieldstone violated Provisions A.2 and C.2 of the General Permit.

A) The General Permit Provision A.2 provides:

“Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.”

Fieldstone violated this provision by discharging concrete wash-out water.

B) The General Permit Provision C.2 provides:

“All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.”

Fieldstone violated this provision by not developing and implementing an effective SWPPP.

9. Fieldstone violated the General Permit by discharging storm water and non-storm water containing pollutants to waters of the United States from the construction site. Fieldstone also violated the General Permit by failing to properly develop and implement an effective SWPPP and a monitoring program which includes BMP maintenance, inspection and repair. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
10. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
11. The sediment-laden storm water discharged to the storm drain system from the site was estimated to be 133,462 gallons (based on area, intensity of the storm and runoff coefficient). The discharge volume for concrete wash-out could not be estimated.
12. Pursuant to Section 13385(c), the total maximum assessment for which Fieldstone is civilly liable is \$1,374,620 (\$50,000 @ \$10,000 for each day of violation and an additional \$1,324,620 based on the estimated discharge of 133,462 - 1,000 = 132,462 gallons @\$10 per gallon) for the violations cited in Paragraph 9, above.
13. Fieldstone saved approximately \$12,900 by not implementing adequate BMPs at the site (43 acres @ \$1,000/acre at 70% project completion). Board staff costs for investigating this incident were approximately \$1,120 (16 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 16, below.

15. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>The SWPPP was not adequately implemented. Visual site monitoring conducted by facility staff failed to detect deteriorated and/or improperly placed BMPs.</p> <p>Due to facility's lack of adequate BMP implementation, storm water and non-storm water discharge containing pollutants entered the storm drain system. Photos taken at the site indicated sediment-laden storm water discharge. There was also evidence of non-storm water containing pollutants entering the storm drain. The storm drain discharges into San Antonio Channel before entering Prado Dam.</p> <p>Fieldstone's inaction and failure to provide adequate employee training and oversight of its operations led to inadequate BMP implementation and caused pollutants to be discharged into the waters of the U.S.</p>
B. Culpability	<p>The discharger's inspection and monitoring program failed to detect deteriorated or inadequately placed BMPs and caused the discharge of polluted storm water and non-storm water into waters of the U.S. Despite Board staff's repeated notification to immediately correct the problems at the site, the facility continued to be out of compliance on subsequent visits.</p>
C. Economic Benefit or Savings	<p>Fieldstone saved approximately \$12,900 by not implementing adequate BMPs at the site during the period of construction.</p>
D. Prior History of Violations	<p>Despite the NOV on September 6, 2002 and several oral requests, Fieldstone was not in compliance during subsequent inspections of the site on November 8, 2002, November 14, 2002, November 27, 2002, and December 16, 2002.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 16 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$1,120).</p>
F. Ability to pay	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount.</p>

16. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Fieldstone in the amount of \$15,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

Fieldstone may waive its right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order for \$15,000 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

3/10/03

Date

/s/

Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Fieldstone Homes)
14 Corporate Plaza)
Newport Beach, CA 92660)
Attn: Steve Bradley)

Complaint No. R8-2003-0037
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Fieldstone Homes to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0037. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$15,000. I understand that I am giving up the right of Fieldstone Homes to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Fieldstone Homes